

ALFRED MANNING
v.
COMMISSIONER OF INDIAN AFFAIRS

IBIA 80-41-A

Decided July 10, 1981

Appeal from Commissioner's decision denying tribal member's request to obtain tribal land by exchange.

Affirmed.

1. Indian Lands: Tribal Lands--Indian Tribes: Generally

Tribal land may not be alienated unless authorized by Congress. A tribal member's request to exchange land for tribal land on the Fort Peck Reservation acquired under the Submarginal Land Act of 1975, 89 Stat. 577, was properly denied by the Bureau of Indian Affairs in the absence of statutory authority permitting the exchange of such submarginal lands.

APPEARANCES: Gerard M. Schuster, Esq., for Alfred Manning, appellant; Marvin J. Sonosky, Esq., for Assiniboiné and Sioux Tribes.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Alfred Manning, appellant, is an enrolled member of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation in Montana. He appeals from a decision of the Commissioner of Indian Affairs dated April 14, 1980, denying his request that the Department approve an exchange of a tract of land owned by appellant containing 320 acres for a tract of tribal land containing 160 acres. The 160-acre tract sought by appellant is a portion of approximately 85,352 acres of submarginal land conveyed to the Fort Peck Tribes pursuant to the Submarginal Land Act of October 17, 1975, 89 Stat. 577. The Commissioner's decision upheld the findings of the Acting Area Director, Billings Area Office,

who concluded in a decision rendered August 30, 1979, that proper statutory authority did not exist for the land transfer in question.

Discussion, Findings, and Conclusions

[1] Tribal land may not be alienated unless authorized by Congress. See Act of June 30, 1834, 4 Stat. 730 (25 U.S.C. § 177 (1976)); Federal Indian Law at 675-76 (GAO 1958). This limitation is even imposed on tribal conveyances to individual members. Solicitor's Opinion, 58 I.D. 218 (1942).

We must look to where Congress may have authorized the exchange of tribal land on the Fort Peck Reservation. The tribes of the Fort Peck Reservation are not organized under the Indian Reorganization Act of 1934, 48 Stat. 984 (25 U.S.C. §§ 461-486 (1976)). Accordingly, the provisions of section 4 of the above Act (25 U.S.C. § 464), which permit the Secretary of the Interior to approve voluntary exchanges of Indian lands, are of no avail to the appellant in this case.

The only statute authorizing land exchanges on the Fort Peck Reservation is the Act of May 19, 1958, 72 Stat. 121, which restored to tribal ownership all "vacant and undisposed-of ceded lands" on the reservation. Section 3 of this statute states that lands restored to tribal ownership pursuant to the Act "may be sold or exchanged by the tribe, with the approval of the Secretary of the Interior."

The tribal land sought by appellant does not consist of undisposed-of ceded land restored to the Fort Peck Tribes under the 1958 Act. Rather, the land in question is "submarginal" land conveyed to the Fort Peck Tribes pursuant to the Submarginal Land Act of 1975, supra. No authority is contained in the Submarginal Land Act for the exchange of lands covered thereby.

Appellant's contention that the authority to exchange lands found in the Act of May 19, 1958, may be inferred to be a tacit provision of the Submarginal Land Act is rejected.

The decision of the Commissioner of Indian Affairs dated April 14, 1980, is affirmed. Pursuant to 43 CFR 4.1, this constitutes the final action of the Department in this matter.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge